Supreme Court, U.S.
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No. 87-1601

IN THE

Supreme Court of the United States

October Term, 1987

WESLEY K. BELL, individually and d/b/a WES OUTDOOR ADVERTISING CO.,

Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI and NICKOLAS MONTEFORTE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

JURISDICTIONAL STATEMENT

WESLEY K. BELL
Plaintiff-Appellant, Pro Se
P.O. Box 538
188 Route #72
Manahawkin, New Jersey 08050
(609) 597-3222 or (609) 597-0800

Batavia Times Publishing Co.
Batavia, N.Y. (716) 344-2000

Questions Presented

1. May the State of New Jersey and its employees, take private property (billboard sites and billboard structures) which are not needed for any public purpose and does not further a substantial government interest, without compensation to its owners?

2. May the State of New Jersey and its employees, take private property for the purpose of removing billboards, which are a First Amendment activity, in a Business District, without justification or proof of need, while leaving adjacent lands of others, untouched by their actions?

3. May the State of New Jersey and its employees enter onto private property and destroy billboards and then be relieved of all liability by informing the Trial Judge that they made an error, or dispute the location of the billboards and take the position that the owner should submit bills for material loss of the structures that may or may not be reimbursed by the State?

4. May the State of New Jersey and its employees deny a landowner billboard permits by alleging State ownership of lands, which was proven to be erroneous over a period of 15 years and then be exempt from liability of losses as a result of their error after a finding by the Trial Court that the State did not, in fact, own the lands?

5. May the State of New Jersey and its employees falsely allege material facts to deny Plaintiff a trial on the merits and then be exempt from liability for damages suffered as a result of those misrepresentations?

6. May the State of New Jersey and its employees issue deeds from one State Agency to another, for lands legally in possession by a third person and deny that third person a hearing over their ownership rights?

7. May a District Court Judge enter a protective order against a Plaintiff, denying him the right to bring "any future court action" over any claims between the parties, even though no trial on the merits has ever been obtained and Plaintiff is the title owner of the property?

8. Are the State of New Jersey and its employees liable for Plaintiff's loss of his home and property through a Banks First Mortgage foreclosure as a result of Defendants "taking of private property without compensation" when that taking cut off the revenues used to pay the mortgage, specifically on the remainder of the same property where the taking occurred?

9. Do additional acts which continue to violate Plaintiff's Protected Rights "restart the Statute of Limitations"?

10. May the trial court dismiss a complaint when issues of property ownership and surveys are at issue without any expert testimony from engineers, surveyors or the owners, to prove the rightful ownership claim?

11. May the State of New Jersey and its employees use Eminent Domain as a zoning enforcement in violation of the New Jersey Constitution?

12. May the State of New Jersey and its employees condemn or deny billboard construction in Zoned Business areas, without complying with the 'four part standard' as set forth by the United States Supreme Court, in *Central Hudson Gas & Electric v. Public Service Commission*, U.S. 557, 563-566 (1980)?

13. Do billboards, billboard construction and billboard sites constitute real property requiring compensation by the U.S. Constitution?

14. Does the First Amendment of the U.S. Constitution require Defendants to justify their broad and encompassing acts to remove all Plaintiff's billboards in an area which would in effect, put him out of business and remove a constitutionally protected medium of speech?

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IN THE

Supreme Court of the United States

October Term, 1987

WESLEY K. BELL, individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI and NICKOLAS MONTEFORTE,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

JURISDICTIONAL STATEMENT

Jurisdiction

The subject of this case is "the Constitutionality of New Jersey officials, to confiscate real property using condemnation as a Zoning Enforcement to remove Billboards in a Zoned and Developed Business Area without compensation for the Billboards and also in violation of the Federal Uniform Relocation Act and the United States Constitution affecting "Freedom of Speech and Compensation".

The Constitutionality of New Jersey officials to enter onto Private Property, without any legal right of entry and destroy Private Property, without Compensation (billboard structures) under protection of Armed State Police and in violation of an existing court order dated May 29th, 1969 (App. at 313a).

The Constitutionality of selecting plaintiff's assets and business interest, in their entirety, along a six mile section of a thriving Zoned Business Area, in a hop-scotch manner, while leaving adjacent parcels untouched.

The Constitutionality of denying plaintiff a trial on the merits, over the illegal confiscations and State Zoning Enforcement in violation of both the New Jersey Constitution and the United States Constitution by State Officials.

The Constitutionality of State Officials to conspire to put Plaintiff out of business by misuse of State Agencies.

The United States District Court Orders and Oral Opinions of Judge Thompson on pages 366a & 368a and 355a and the United States Court of Appels for the Third Circuit dismissal on page 423a are not in compliance with this court's previous binding precedent decisions and these orders and findings have caused inconsistencies within the District and Circuit Courts holdings on the United States Constitution and are violations under

United States Code

23 U.S.C. 128 F.H.W.A.
23 C.F.R. 790, 5(a)
23 U.S.C. 131 to 134 amended 1978
28 U.S.C. 1257
28 U.S.C. 1291
28 U.S.C. 1331
28 U.S.C. 1334
28 U.S.C. 1343
42 U.S.C. 1938
42 U.S.C. 1985 (3)
42 U.S.C. 1986
42 U.S.C. 4652, 4655
and Public Laws 91-646, 93-643 and 95-599

Jurisdiction of this Court to review this matter is founded on the existence of a Federal Question and amount in controversy and on the existence of a question arising under the particular statutes aforementioned and the First, Fifth, Eleventh, Thirteenth and Fifteenth Amendments and Article Three, Section Two to the United States Constitution and Article 9 Section 13, Article 1 Section 16 of The New Jersey Constitution.

This matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars.

The action also arises under Public Laws 89-285, 93-643 and 95-599.

Statement of the Case

Plaintiff, in this case, has been in the Outdoor Advertising business since April, 1957, a total of 31 years, and is a former publisher of a weekly newspaper.

Defendants originally engaged in a confrontation with Plaintiff, in September 1967, when they entered onto private property and cut down two large billboards, without condemnation or compensation.

Plaintiff brought a declaratory action against Defendants and obtained a declaratory court order declaring that the premises were owned by Plaintiff and that Defendants were ordered to condemn "that portion of the property that was necessary for Highway purposes." See Order as Exhibit #1. Defendants then gave notification that they intended to condemn *all* of Plaintiff's billboard sites between the Garden State Parkway and Long Beach Island. This area was zoned and used as a business area on Route #72. Plaintiff filed a suit challenging the statute which Defendants were using, charging that it was un-Constitutional because it lacked any standards or limitations. The New Jersey Supreme Court held, in *Wes Outdoor Adv. Co. v. David J. Goldberg*, 55 N.J. 347 (1970), that "although the statute was constitutional, any *abuses* by the Highway Commission were subject to recourse through the courts".

Defendants meanwhile withheld billboard license permits from Plaintiff, cut down more of his billboards and brought a penalty action against him for displaying advertising on these same sites, without state permits.

A decision in the penalty matter, by the New Jersey Supreme Court in *Kingsley v. Wesley K. Bell, t/a Wes Outdoor Advertising Co.*, resulted in a penalty reduction. Plaintiff then brought a Civil Rights action for damages and relief, in the Federal District Court and the Trial Judge dismissed the complaint as being barred by the Statute of Limitations. This case has now been called

"BELL I" (see Order in *Bell v. State of New Jersey,* docket #77-1531 full order on page 316a of appendix).

Plaintiff appealed and the Third Circuit Court of Appeals and their decision upholding the dismissal, is on page 324a of the Appendix, under *Bell v. State,* docket #78-1578.

Plaintiff appealed and the U.S. Supreme Court denied Certification, on June 4th, 1979 and denied ReHearing on October 1, 1979.

Defendants then obtained a deed from the N.J. Department of Conservation and Economic Development to the N.J. Dept. of Transportation for property leased to Plaintiff since 1957, by Marion H. Brown and not under State ownership (see lease on Page 175a of Complaint).

Defendants then issued a notice to remove to Plaintiff, on March 16, 1974. Plaintiffs again brought suit in the Federal District Court, under what is now termed "BELL II".

The Federal District Court Judge dismissed the case under res-judicata. The courts opinion is at page 365a of the Appendix and the courts order is at page 378a of the Appendix.

In Judge Thompson's finding, she found that the state in fact, did NOT own Parcel #L2R31D, a/k/a Lot 31, Block 147. The Judge erred partially in that she determined that Plaintiff did not set forth proof of ownership, which was incorrect since Plaintiff submitted substantial proof of his ownership. Her decision was obviously based on misstatements of fact, by Defendants, in affidavits and argument before the court.

On March 15th, 1983, a settlement conference was held at the Judge's direction and the Defendants offered to allow the billboards to remain for six months and then be removed by Plaintiff in September 1983. Plaintiff's attorney requested that Defendants pay for the billboard

structures, as they were required by law to do. Defendants refused to pay compensation for the billboard structures and threatened to pursue another penalty action for displaying advertisements without State permits (see attorneys letter Sterns, Herbert & Weinroth dated March 16th, 1983 regarding settlement conference, on page 212a of the Appendix.)

On September 29th, 1983, Judge Thompson issued her Order (copy on page 380a of the Appendix).

On September 30th, 1983, at 7:00 a.m., Defendants began cutting down and destroying Plaintiff's billboards, with Police Protection and said acts were done without payment or compensation as required by the U.S. Constitution and court order issued on May 29th, 1969 requiring 45 Day Notice to Plaintiff after payment of Compensation for Billboards (see order at 313a Appendix).

Once Defendants obtained the September 29th, 1983 order, they were required by pay compensation for the billboard structures that were on the lands which were condemned as vacant.

Plaintiff appealed to the Third Circuit Court of Appeals and sought to have the September 29th, 1983 destruction included as 'interim acts' and was approved by the Court.

The Third Circuit also dismissed the Appeal by upholding the lower court. See order on page 405a of the Appendix.

Plaintiff appealed to the Supreme Court and Certification was denied on October 1, 1979 (See order on page 336a of the Appendix and Petition for ReHearing was also denied, on April 15th, 1985, copy on page 408a of the appendix.)

Defendants then went out and cut down additional billboards, on February 14th, 1986, which belonged to Plaintiff, in other various areas of the State of New

Jersey, which had nothing to do with this entire matter. Plaintiff perfected title by purchasing from heirs of the owners of the property, by recorded deed, as follows: Parcel #L3E1&2, #TLE-1G and #1H, as designated by Defendants and also known as Lots 3 and 4, Block 298, on 5-30, 1987, 6-13, 1987, 6-21, 1987, 7-3, 1987, and 7-25, 1987. Copies of the deeds are at pages 151a to 173a of the Appendix.

Plaintiff, on April 10th, 1986, brought this action in the Federal District Court, for damages and relief now known as BELL III.

Judge Thompson dismissed the action and entered a protective order preventing Plaintiff from seeking any relief in these matters. Plaintiff appealed to the Third Circuit Court of Appeals and was dismissed on October 21st, 1987 (See Order on page 423a of the Appendix.) Plaintiff filed an Appeal in this matter to this court, and on December 28th, 1987 Plaintiff requested a 60 day extension in this matter to file briefs under Rule 20.6 which was approved (see Order on page 429a of the Appendix.)

ARGUMENT

Parcel No. 22C.

Plaintiff is the owner of Parcel #22C, which is Lot 26A, in Block 145 of the Township of Stafford, in the County of Ocean and the State of New Jersey.

Plaintiff resides on this Parcel and also maintains his business office and warehouse thereon.

Plaintiff owned and maintained two large billboards on the Route #72 frontage of this parcel which had 225 ft. fronting on the highway and 700 ft. deep (See Exhibit #26 of Complaint).

Defendants condemned the road frontage area of 225 ft. and depth of 100 ft., as vacant land (See Declaration of Taking as VACANT).

Defendants paid no value for the billboard structures and on September 29th, 1983, when Defendants entered on these premises and cut down and destroyed the billboards, they terminated the income being received by Plaintiffs, to pay the mortgage payments on the remaining portion of this same parcel (see Exhibit #27 of Complaint).

As a direct result of this destruction, Plaintiff's mortgage fell into default and First Jersey National Bank/South began foreclosure on the remainder portion of the premises.

On February 19th, 1988, Final Judgment was entered against Plaintiff, on these premises (see Court Order on page 2a of the Appendix).

This Order provides that

> "the owners are absolutely debarred and foreclosed of and from all equity of redemption of, in and to so much of the said mortgaged premises as shall be sold as aforesaid under this judgment."

In Re Condemnation of Property in Homer City, Pa., 519 A 2d 1065 (Pa. Cnwlth. 1987), the Court held, at page 1068:

> "Where such circumstances were accompanied by extraordinary circumstances resulting in the actual loss of the property, such as a loss of tenants and income, or a mortgage foreclosure, our courts have held that a de facto taking has occurred. *Conroy-Prugh; Department of Transportation v. Standard Investments Corp.*, 80 Pa. Commonwealth Ct. 649, 472 A.2d 282 (1984), aff'd 506 Pa. 337, 485 A.2d 392 (1984); *Peter Roberts Enterprises Inc. v. Department of Transportation*, 31 Pa. Commonwealth Ct. 479, 376 A.2d 1028 (1977).
>
> (5) The theory behind de facto recovery involving commercial property is the right of expectation of a reasonable return by the owner on his investment. The focus in these cases is the extent of the interference by the governmental agency, and the impact on the owner's rights in the parcel, *i.e.*, whether the imminence of condemnation threatened the actual loss of the property or simply a decline in value substantially due to the imminence of condemnation, for which compensation is provided in section 604 of the Code, 26 P.S. 1-604. *Visco v. Department of Transportation*, 92 Pa. Commonwealth Ct. 102, 498 A.2d 984 (1985).

In *U.S. v. 33.5 Acres, Okanogan County, State of Wash.*, 789 F 2d 1396 (9th Cir. 1986), the court held:

> "when Government takes only part of persons property, and value of remainder depreciates because of proposed use on condemned parcel, owner is entitled to compensation both for that which is physically appropriated and for 'severance damage', *ie*; diminution in value to noncondemned property".

Parcel No. L2R-31D.

Plaintiff is the owner of a permanent easement on which he has a large double set of billboards, on Route

#72, (see Exhibit #29 of Complaint) on Lot 31, in Block 147, in the Township of Stafford, County of Ocean and the State of New Jersey.

Defendants classify this tract of land as vacant on Parcel #L2R-31D, in a condemnation begun on March 14th, 1975.

Plaintiff originally recorded an Agreement to Purchase this tract of land on December 30, 1968 (copy at Exhibit #15 of the Complaint). Plaintiff recorded a permanent billboard easement on this tract on February 7th, 1972 (Copy at Exhibit #16 of the Complaint).

Plaintiff was *denied* billboard permits on this site, on January 30th, 1968, July 29th, 1968, October 15th, 1968, October 30th, 1968, April 1st, 1975, and February 5th, 1980. All were denied and the denials are on pages 189a, 190a, 192a, 198a, 210a and 237a of the Appendix.

Defendants were given copies of Plaintiff's easement on January 31st, 1978, during cross examination at a State Administrative hearing (See Transcript of D.O.T. Hearing, testimony is on transcript page 121, line 7 to page 130, line 9).

Defendants continued to allege State ownership of this parcel and Plaintiff's attorney, Clinton Cronin, wrote a letter to Defendants on November 28th, 1979, clearly setting forth Plaintiff's ownership (See letter on page 234a of the Appendix).

Plaintiff submitted an affidavit to the District Court on July 30th, 1982, setting forth in detail, ownership information (at Appendix on page 243a). Defendants withdrew their condemnation arrangements with the title owners of the property, on March 13th, 1975, when this Plaintiff refused to sign off without compensation (See letters, Exhibits #12 and #13 of Complaint).

Defendants continued to deny Plaintiff permits to display advertising on his billboards, on this property.

In August, 1981, Plaintiff began to use these billboards, without State permits, to minimize the damages being sought in BELL II. Plaintiff was able, through his attorney, to prove that this parcel was not owned by Defendants and Judge Thompson entered an order on it, on July 20th, 1983 (See page 378a of the Appendix).

Defendants improperly submitted false certifications that they had never denied permits to Plaintiff, on this site and that these billboards always had advertisements on them, for the express purpose of denying Plaintiff any damages due.

Defendants improperly submitted false certifications that Plaintiff failed to submit proof of ownership on this site, to deny Plaintiff damages (See paragraph #19, of Exhibit #10 of the Complaint).

Judge Thompson improperly relied on Defendants false certifications and representations and found that Plaintiff failed to inform Defendants of his right to this parcel and further found that since Plaintiff already had advertisements on these signs, he had no losses.

Defendant finally issued billboard advertising permits on this site, in October, 1983.

Plaintiff is entitled to recover damages, losses and legal fees from September, 1968 to September, 1982 (See Exhibit #14 of the Complaint). Plaintiff is entitled to a "Trial on the Merits" on all counts affecting this tract of land.

Judge Thompson improperly dismissed Plaintiff's claims on this site, on a Motion to Dismiss. In *Boulevard Realty Corp. v. Providence Redevelopment AG*, 308 F Supp 224 (1969), the court held:

> Allegations of property owners that actions of defendant in causing and permitting threat of condemnation to hang over plaintiffs' property amounted to taking or damaging of property

> without due process of law in violation of Fifth and Fourteenth Amendments raised serious questions of fact and law which could not be decided on motions to dismiss for want of federal jurisdiction. U.S.C.A. Const. Amend. 14; 28 U.S.C.A. §1331(a).

In *Foster v. City of Detroit*, 405 F.2d 138 (1968) the court held . . .

> Where there was a taking of property by city in violation of Constitution when city allowed condemnation proceedings to pend for ten years, and then dismissed the proceedings on June 15, 1960, and owners of realty brought suit for the taking on November 22, 1961 for deterioration of realty during pendency of proceedings, Michigan three-year statute of limitations did not begin to run until condemnation proceedings were dismissed, and suit was not barred. M.C.L.A. 600.5805(7), 600.5827; U.S.C.A. Const. Amends. 5, 14.

In *Loretto v. Teleprompter Manhatten CATV Corp.*, 102 S.Ct. 3164 (1982) the court held, at page 3175:

> [8] In short, when the "character of the governmental action," *Penn Central*, 438 U.S., at 124, 98 S.Ct. at 2659, is a permanent physical occupation of property, our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner.

In *Lomarch Corp. v. Mayor of Englewood*, 237 A 2d 881,

> "the State Supreme Court ruled 7-0 that Englewood should compensate Lomarch for stalling the firm's plan to build on its 16 acre lot."

In *Washington Market Enterprises, Inc. City of Trenton*, 343 A 2d 408, the New Jersey Supreme Court ruled 6-0 that in cases where the city's activities caused substantial destruction to the value of the property owner's uncondemned land, the property owner is entitled to compensation."

Parcels No. L3E1 and 2 and Parcels No. TLE-1G and 1H.

Plaintiff is the owner of a portion of Lots 3 and 4, in Block 298, in the Township of Stafford, County of Ocean and State of New Jersey and Plaintiff is also a tenant, by a long term Recorded Lease Easement, for the construction, maintenance and ownership of billboards thereon. The most recent billboard Lease Easement was recorded on March, 1963. Said deeds were recorded on the following dates: (copies in Appendix)

July 7th, 1986 AKER to BELL	151a
July 8th, 1986 RODGER M. CRAMER to BELL	155a
July 8th, 1986 JOAN I. CRAMER to BELL	159a
July 8th, 1986 STEWART to BELL	163a
Aug. 4th, 1986 CRAMER to BELL	167a
Oct. 21st, 1986 CRANE to BELL	171a

Defendants obtained an invalid Deed from the New Jersey Department of Conservation and Economic Development to the New Jersey Department of Transportation on portions of these premises. The lands deeded from one state agency to the other, are lands which were filled in by accretion during and after the State built the Route #72 causeway in the early 1950's and cut off the flow of Salmon's Island Thorofare. See *Borough of Wildwood Crest v. Masciarella*, 92 N.J. Super at 53, the courts have held in New Jersey that the upland owners are entitled to the benefit of the accretion caused by natural or artificial means.

Defendants then issued to Plaintiff, Notice to Remove his billboards, within 14 days or they would remove them.

Judge Thompson said that since the Defendants did not remove them, as threatened, Plaintiff's claims are dismissed.

Judge Thompson further entered a protective order against Plaintiff from ever bringing any action over these sites.

Plaintiff is the owner of record of these premises and also the recorded Lease Easement owner of the remainder.

Judge Thompson received copies of all of the aforementioned Deeds to these properties, on November 10th, 1986, in Plaintiff's Brief and Appendix, filed in opposition to Defendant's Motion to Dismiss. Defendants took the position that the Deeds were 'Quit-Claim' Deeds and therefore had no force.

Plaintiff put forth the argument that 'quit-claim' Deeds are commonly used in New Jersey by the Board of Proprietors, Municipalities, Counties and others.

Plaintiff's Deeds represent payment of $8,000.00 (eight thousand dollars) paid to the lawful and rightful heirs of the title owners.

In *Pride Exploration v. Marshall Exploration*, 798 F 2d 864 (5th Cir. 1986)

> "the court held that if grantor and grantee can be determined from whole of instrument, and document is signed and acknowledged by grantor, then document accomplishes legally effective conveyance."

In *U.S. v. 198.73 Acres of Land, More or Less*, 800 F 2d 434 (4th Cir. 1986)

> "the court held that land can not escheat to the government when valid heirs exist to its ownership."

In *Cooper v. U.S.*, 827 F 2d 762 (Fed. Cir. 1987)

> "the Court held that Failure of owner to acquire legal title to property until after physical events causing taking of timber began did not impede his recovery, in that destruction of trees did not stabilize sufficiently to ascertain proper compensation until after acquisition of legal title. U.S.C.A. Const. Amend. 5."

Plaintiff has been in possession of these premises since 1958 and has maintained four large billboards thereon, since that time.

Plaintiff's open and recorded possession through leases, deeds and existing billboards, clearly sets forth Plaintiff's rights to full hearings and a trial on the merits.

Judge Thompson clearly erred in dismissing Plaintiff's claims and also erred in issuing to Defendants, a Protective Order preventing Plaintiff from all future actions over these billboards and properties, just because Defendants had not yet removed these four billboards on the disputed lands, as shown on Complaint Exhibits #30, #31, #32 and #33. In New Jersey the law is clear, under N.J.S. 2A:35-1:

> "the Act provides that; any person claiming the right of possession of real property in possession of another, or claiming title to such real property, shall be entitled to have his rights determined in an action in the Superior Court."

In *Troth v. Smith*, 68 N.J.L. 36, 37 (Sup. Ct. 1902), the court said:

> "the rule is settled that the Plaintiff must recover upon the strength of his own title, and that he cannot rely upon the weakness of that of his adversary.
>
> If he fails to support his own title, the Defendant will retain possession until he is ousted by someone who has superior title."

N.J.S.A. 2A:62-2 created a presumption of peaceable possession:

> "whenever any lands be in the actual peaceable possession of the owner or person claiming to own same . . . who shall have paid the taxes upon such lands and to whom or to whose grantors the taxes upon such lands have been assessed for five consecutive years immediately prior to the

commencement of the suit, shall be presumed to be in peaceable possession of such lands within the meaning of the act."

Judge Thompson's Protective Order violates Plaintiff's rights to adjudicate his rights to these premises and billboards.

Parcels No. L-22, 23 and 23B.

Parcels No. L-22, 23 and 23B, also known as Lots 3, 4, 5, 6, 8 and 9, in Block 120, in the Township of Stafford, County of Ocean and State of New Jersey are owned by Plaintiff.

Plaintiff has continuously maintained billboards on these premises, since 1963 and these billboards have continually been licensed by the State of New Jersey, to Plaintiff.

Defendants first cut down and destroyed these billboards, in September 1967, while pending proceedings were before the Law Division of the New Jersey Superior Court, over the ownership of a portion of these lands, which were in the vacated street areas of Poe Street and Philadelphia Avenue.

The Court held, in docket #L-1917-67 P.W. (copy of the Order as Exhibit #17 of Complaint) that the lands were owned by Plaintiff.

Plaintiff re-erected his billboards and Defendants began condemnation proceedings on the premises, as 'vacant' land, paying no compensation for the existing billboards.

Plaintiff challenged Defendants attempt to condemn, claiming that the statute was un-Constitutional because of its lack of standards. *Wes Outdoor Advertising Co. v. Goldberg*, 55 N.J. 347 (1970).

Defendants condemnation was dismissed by the Court, on November 2nd, 1973, for lack of prosecution.

Defendants again brought another condemnation proceeding on November 13th, 1974, and again allowed no compensation for the billboards and proceeded with the Declaration of Taking, as 'vacant' land.

Defendants entered on the premises on September 30th, 1983 and cut down Plaintiff's billboards, again.

Defendants had represented to Judge Thompson, in Complaint Exhibit #10, that this parcel was not involved in the matter before the court. Defendants illegal removal of the billboards on these parcels are the subject of a Superior Court Judgment, in *Bell v. Stafford,* Docket #L-048921-84 P.W. dated March 14th, 1986 in Appendix page 77a, in the New Jersey Superior Court and also the decisions by the N.J. Superior Court Appellate Division, on April 13th, 1987, at page 133a of the Appendix and December 11th, 1987, at page 147a to 150a of the Appendix.

Defendants had also prevented Plaintiff from re-constituting these billboards on October 31st, 1984 (see police report in Appendix at 431a and News Article and Photo November 1st, 1984 at Appendix page 433a).

These matters were appealed by Stafford Township to the N.J. Supreme Court and Argument was held on January 5th, 1988, over the April 13th, 1987 Decision. A decision is now pending.

Certification has not yet been granted on the December 11th, 1987 Order. The New Jersey State courts recognize the validity of Plaintiff's Constitutional Claims, yet Judge Thompson and the U.S. Third Circuit Court of Appeals continue to ignore Plaintiff's Constitutional Rights and Claims.

"The New Jersey Appeals Court recognized at page 3 of their opinion that the DOT mistakenly tore down the billboards located on Lot 8 Block 120 even though this land had not been condemned by the State."

Parcel No. L 11B

Plaintiff is the owner of Parcel No. L11B, also known as Lot 8, Block 68, in the Township of Stafford, County of Ocean and State of New Jersey. Plaintiff obtained a State billboard permit, to erect one large billboard, in 1966.

The Defendants began a condemnation proceeding on this parcel, on November 17th, 1969. Defendants placed no value on the existing billboard or its location value and condemned the land as 'vacant', while their condemnation map showed the Billboards existence. Defendants illegally revoked Plaintiff's billboard permits in 1975, without a hearing, even though one was requested and entered onto the premises, destroying Plaintiff's billboards, thereon.

Plaintiff re-built the billboard and continually paid the yearly State license fee each year, to Defendants, even to the current date.

Defendants again entered onto the premises, on September 30th, 1983 and again destroyed the billboards without Notice or compensation as required by the State and United States Constitution.

Parcel No. L22B.

This Parcel is also designated as Lot 26A, Block 145A, in the Township of Stafford, County of Ocean and State of New Jersey and is owned by the Plaintiff.

The Defendants have continually withheld permits on this site, from 1968 to 1983.

Defendants began condemnation of this parcel, on November 17th, 1969, as 'vacant' land, paying no value for the billboards constructed thereon. Defendants entered onto this property on September 30th, 1983, without payment or posting of compensation.

Plaintiff attempted to re-construct these billboards on the remainder of the property and was prevented from doing so, by the Township of Stafford. Litigation

commenced between this Plaintiff and the Township, which resulted in a favorable decision by the N.J. Superior Court Appellate Division, on April 13th, 1987 (copy of Opinion on page 133a of the Appendix). The Township of Stafford appealed the decision to the New Jersey Supreme Court, which held oral argument on January 5th, 1988 and a decision is pending.

This case also ignored the illegal removal by the State employees, of billboards on Parcels No. L-22, 23 and 23B.

Defendants, since 1983, have issued an access permit through Plaintiff's lands, for Highway access, to an adjacent land owner, for private purposes. In *Frelinghuysen v. State Highway Comm.*, 107 N.J.L. at 218:

> "the New Jersey Supreme Court held that when the Highway Department takes land of a citizen by condemnation proceedings, acquires an easement only, and only so much of the right, title and interest of the owner in the land as may be necessary therefor."

The court went into detail, at page 221:

> The right of the individual to be secure in his person and his property has been guaranteed by the constitution of the state and the constitution of the United States. In 1832 it was declared by the Chancellor of this state in the case of *Scudder v. Trenton and Delaware Falls Co.*, 1 *N.J. Eq.* 694, that "private property cannot be taken for private use. The legislature has no right to take the property of one man and give it to another even upon compensation being made." and since that time neither the constitution of 1844 nor the present constitution confer such power. That the power is thus limited is apparent from the recent decision of the Court of Errors and Appeals in *Landell v. State*, 101 *N. J. L.* 294, 297, in which the Scudder case is cited. In 20 *C. J.* 546, it is said that "independently of express authority given by the constitution

private property can be taken only for a public use, and the legislature cannot authorize a taking for strictly a private use even upon making compensation. The necessity that the use shall be public excludes the idea that property may be taken under semblance of public use and ultimately conveyed and appropriated to a private use." citing numerous authorities.

Such we conceive to be the law of our own state. The present constitution provides in article 1, section 16, that "private property shall not be taken for public uses without just compensation." This is a recognition of a legislative power to take private property for a public use, but is far from giving authority to take such property for other than public uses. When the state takes the property of its citizens for highway purposes, it acquires an easement only, and it would seem that it is empowered to take only so much of the title as is essential to the public use authorized. *New Jersey Zinc and Iron Co. v. Morris Canal and Banking Co.*, 44 *N. J. Eq.* 398, 464. To take all the right, title and interest of an owner obviously may be beyond such necessity and be a contradiction in terms of the right to acquire an easement only. Public uses are constantly changing and particularly with regard to the lands occupied by our highways; the courses and directions of the highways are frequently altered and upon the abandonment of such lands for such use, unless the state holds a greater title by the voluntary act of the owner, the easement ceases and the state has no further interest.

Parcel No. L4B.

Parcel No. L4B, also known as Lot 27D, Block 144 in the Township of Stafford, County of Ocean and State of New Jersey, is owned by the Plaintiff and was under a Contract of Purchase with possession on January 8th, 1969, when Defendants filed their condemnation Declaration of Taking, as "VACANT LAND", when in fact, a set of billboards was erected thereon.

Plaintiff also had a recorded billboard Lease Easement on the premises since 1968.

Defendants entered into a settlement agreement with the then-Title Owners, totally ignoring Plaintiff's rights for $8,000.00 and posted the funds into court, until sellers could obtain Plaintiff's signature to sign off all of his rights, title and interest.

Plaintiff refused and the land owners brought suit to cancel the agreement of purchase on November 14th, 1973.

Plaintiff filed a counterclaim for Specific Performance and named the State of New Jersey in the proceeding.

The State sent a representative into court, who advised the Judge that he was sent to be an observer and not a participant.

The matter was then settled with Title Owners deeding over to this Plaintiff, all of their right, title and interest on April 23rd, 1975.

Defendants entered onto the premises on September 30th, 1983, without payment or posting of compensation, for the billboards, and destroyed them. Judge Thompson erred in not granting a "Trial or Hearing on the Merits", when she dismissed Plaintiff's claims.

Plaintiff holds a rightful interest in this Parcel and for the billboards which were destroyed on September 30th, 1983.

In *Almo Land & Cattle Co., Inc. v. Arizona*, 96 S.Ct. 910 (1976), the Supreme Court held:

> "Ordinarily, condemned leasehold interest has a compensable value when the capitalized then fair rental value for remaining term of lease, plus value of any renewal right exceeds capitalized value of rental the lease specifies."

Parcel No. L17G and Parcel L17E & D.

These three parcels are designated as Lots 10 and 37, in Block 145A and Lot 9, in Block 145B, in the Township of Stafford, County of Ocean and State of New Jersey,

and are owned by Plaintiff, for the express purpose of billboard use and were purchased June 12th, 1968.

Defendants began condemnation of these parcels and filed a Declaration of Taking, as 'vacant' land, on April 1st, 1970.

Defendants continually withheld billboard permits on these sites, from 1968 until the present date.

Defendants entered onto these premises on September 30th, 1968 and destroyed Plaintiff's billboards without any compensation.

Uncondemned Block 33—Lot 6.

This property is owned by Plaintiff and has had billboards located on it since *1958.* It is located in the Township of Barnegat, County of Ocean and State of New Jersey.

These billboards have always been licensed by the State of New Jersey and the permit for 1985 is shown as Exhibit #2, in Plaintiff's Complaint. Defendants illegally entered onto these premises, on February 14th, 1986 without Notice or condemnation and cut down and destroyed Plaintiff's billboards.

Defendants admit this destruction was 'in error' and have advised Judge Thompson that if Plaintiff would submit costs of materials, they *MAY* make payment for same.

Defendants have made no offers for payment of losses of revenue or costs of re-construction.

Plaintiff has requested Defendants to make restitution offer, in writing and this request has gone unanswered.

In *Lake Nacmiento Ranch v. San Luis Obispo County,* 830 F 2d 977 (9th Cir. 1987) the Court held, at page 980:

> In order for an "as applied" regulatory taking claim to be ripe, a plaintiff must establish two components: (1) that the regulation has gone so far that it has "taken" plaintiff's property; and (2) that

> any compensation tendered for such taking is not "just." *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 106 S.Ct. 2561, 2566, 91 L.Ed.2d 285 (1986); *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1453, *modified*, 830 F.2d 968 (9th Cir. 1987).

In *Perzanowski v. Salvio*, 369 F. Supp 223 (1974) the District Court made the proper finding which clearly supports Plaintiff's position, that Judge Thompson erred in her finding that the Defendants offered to pay the claims when in fact, they only offered to pay for material costs.

In *Perzanowski v. Salvio*, the court held, at page 231:

> [6, 7] The individual defendants' motion to dismiss for failure to state a claim upon which relief can be granted, Rule 12(b)(6), Fed.R.Civ.P., is denied. While it is certainly true, as the defendants suggest, that local administrative officials may well be shielded by immunity from liability for acts which occur during the good faith performance of their official function, *see* e.g., Jones v. Perrigan, 459 F.2d 81 (4th Cir. 1972); Bennett v. Gravelle, 323 F.Supp. 203, 212-215 (D.Md.) aff'd, 451 F.2d 1011 (4th Cir. 1971), it is equally true that an adequate factual basis must precede a "finding of good faith." The present record before the Court clearly provides no such basis. The individual defendants' motion to dismiss for failure to state a claim upon which relief may be granted is, therefore, denied.

Defendants presented no factual basis for a 'Showing of Good Faith' in the present case and therefore, Judge Thompson should not have dismissed Plaintiff's claims.

Uncondemned Block 36 Lot 1 and Block 46 Lot 10.

Plaintiff maintains a Lease on the above listed parcels, since November 7th, 1962 (Copy of said Lease is Exhibit #3 in Plaintiff's Complaint), and is recorded in the County Records Section. Both parcels are located in the Township of Barnegat, County of Ocean and State of New Jersey.

Defendants entered onto said lands without Notice, condemnation or compensation, on February 14th, 1986 and cut down and destroyed Plaintiff's billboard structures and piling at three different locations.

Defendants admitted to the destruction *ONLY* after Plaintiff brought this suit.

Defendants have offered replacement of material costs for this destruction which they admit was done 'in error' to the court but have failed or refused to put the offer in writing.

Billboards are Compensable Fixtures

The Courts have continually held that billboards are compensable fixtures in condemnation. See *City of Buffalo v. Michael*, 16 N.Y.2d 88, 262 N.Y.S. 2d 441, 209 N.E. 2d 776 (1965); *State Highway Department v. Branch*, 222 Ga. 770, 152 S.E. 2d 372 (1966); *State Department of Highways v. Lamar Advertising Co. of Louisiana, Inc.*, 304 So. 2d 779 (La. App. 1974); *Rochester Poster Advertising Co. v. State*, 27 Misc. 2d 99, 213 N.Y.S. 2d 812 (1961); *General Outdoor Adv. Co. v. City of Indianapolis*, 202 Ind. 85, 172 N.E. 309 (1930); *Witman v. State Highway Comm. of Missouri*, 400 F.Supp. 1050 (1975); *National Advertising Co. v. Utah State Road Comm'n.*, 26 Utah 2d 132, 486 P.2d 383 (1971).

"First Amendment Inversion"

Count 29 of Plaintiff's complaint deals with his FIRST AMENDMENT RIGHTS and the regular use he puts his billboards to (see exhibits 20a, 23a and 28a of Plaintiff's complaint). Exhibit 20a deals with the same "Nuclear Freeze" group who were the appellants in *N.J. Citizen Action v. Edison Township*, Docket #85-5321, reversed this Federal District Court on August 5th, 1986, finding

Defendants are not required to condemn any of plaintiffs lands as they "are not" and "have not" been needed or used for any public purpose. Their takings on Route #72, deal exclusively with Plaintiffs rights and interest while leaving all others untouched.

Defendants have used and continue to use, the State condemnation power to zone aesthetic regulations into a built-up and zoned business area, in violation of Plaintiffs First Amendment rights.

Aesthetic regulations, through zoning or condemnation, may not be imposed. Defendants total ban of plaintiffs billboards on Route #72, in the municipalities Highway Commercial district, is a substantial restriction of First Amendment freedoms, without any justifications or record of justifications to challenge. See *Schad v. Boro of Mount Ephraim,* 452 U.S. 61 (1981); *Metromedia, Inc. v. City of San Diego,* 453 U.S. 490 (1981).

In Stafford Township, Plaintiff is the only billboard firm maintaining "30 Sheet POSTER BILLBOARDS, on Route #72, which are the most common type used for "FIRST AMENDMENT-TYPE ADVERTISERS". Route #72 is the "main business district" in Stafford Township and most heavily travelled roadway" in Southern Ocean County. It is the only section of highway where advertisers can reach all of the traveling public.

Defendants condemnation of Plaintiff's properties and billboards on this section of highway, consequently removes 85% of Plaintiff's business interest and removes his ability to give access for affinity group causes, with idealogical messages or political groups, parties or individuals for election purposes or billboards advertising activities not normally considered to be commercial. *Wheeler v. Roberts,* Civil Action #74-29 U.S.D.C. decided (3-7-86) copy of order attached in Appendix at 177a. The State may not discriminate by condemning Plaintiff's billboard business properties, and not all other business

properties on the same highway, whether those other properties are built on or not. See *Combined Communications Corp. v. City and County of Denver,* unpublished opinion (3/7/1975) (page 28 Line 20 to page 32 Line 9) see Appendix 282a-285a. See also 189 Colo. Page 464, affirmed, S.Ct. Colorado (copy of opinion attached—Appendix 253a). On page 28, line 20 the Court said the following:

> "Additionally, even where dealing with businesses or structures which are nuisances or nuisances *per se* (which billboards in Denver are not) the Supreme Court has advised us that prohibition of those businesses or structures is not allowable unless "absolutely necessary". *Echave v. Grand Junction,* 118 Colo. 165, 170, 193 F.2d 277 (1948).

The courts decision went further, on page 31, line 11 to page 32, line 9, with the following:

> "Although a few small towns have been allowed to prohibit billboards (or any other business) throughout their basically residential communities, *Murphy, Inc. v. Westport,* 40 A.2d 177 (Conn. 1944); *United Advertising Corp. v. Metuchen,* 198 A.2d 447 (1964), this Court knows of no case in the United States which has upheld the total prohibition of billboards in a metropolitan city. Not only has the Colorado Supreme Court condemned previous efforts to abolish billboards, *Curran Bill Posting & Distrib. Co. v. Denver,* 47 Colo. 221, 107 Pac. 261 (1910); *General Outdoor Adv. Co. v. Goodman,* supra, but also every other court to have been faced with the issue has reached the same conclusion. *Stoner McCray System v. Des Moines, supra; Varney & Green v. Williams,* 100 Pac. 867 (Calif. 1909); *Norate Corp. v. Zoning Board of Adjustment,* supra; *Central Advertising Co. v. Ann Arbor,* supra; *Daikeler v. Zoning Bd. of Adjustment,* 275 A.2d 696 (Penn. Comm. 1971); *Wolverine Sign Works v. Bloomfield Hills,* 271 N.W. 823 (Mich. 1937); and see *Escondido v. Desert Outdoor Advertising Inc.,* 505 P.2d 1012 (Calif. 1973).

> Billboards are not alone in the judicial scrutiny to which an absolute prohibition will be given. This Court is not aware of any case which has upheld the complete exclusion of any business which is legitimate and previously existing business in a metropolitan area. E.g., *Bzovi v. Livonia*, 87 N.W.2d 110 (Mich. 1957) (drive-in theatres); *Appeal of Girsh*, 263 A.2d 395 (Penn. 1970) (multiple unit apartment); *Beaver Gasoline Co. v. Zoning Hearing Board*, 275 A.2d 702 (Penn. 1971) (gas station); *Canover v. Jolly*, 177 S.E.2d 879 (N.C. 1970) (mobile homes); *Wollam v. Palm Springs*, 379 P.2d 481 (Calif. 1963) (sound trucks).

See *Combined Communications Corp. v. City and County of Denver*, (full opinion filed with this Brief, Appendix 253a), the court held, at pages 15 to 17, paragraphs 24, 25 and 26.

This case was affirmed by the Supreme Court of Colorado (542 P.2d 79), full opinion in Appendix 299a.

The United States Supreme Court has tightly reined the exercise of government authority regarding land use where the issues transcend purely police power concerns and impact on First Amendment freedom. *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61 (1981). That Court has sought to strike a realistic balance through analytic framework permitting content neutral restrictions governing time, place and manner of protested expression. Such restrictions are constitutional under *United States v. O'Brien*, 391 U.S. 367 (1968) where found to serve a concrete and substantial governmental interest unrelated to the suppression of speech and where resulting only in an incidental impact on protected speech no greater than essential to the furtherance of the defined governmental interest involved.

At any given time, a state agency or municipality, may conceive through its employees or officials, that its policies should eliminate billboards in a given area or highway for appearance, property values or even quality

of life are somehow challenged or threatened by all manner of First Amendment-related activities, whether corner newsboxes (the subject of the recent finding of unconstitutional prohibition in *Passaic Daily News v. Clifton*, 200 N.J. Super. 468 (Law Div. 1985)), commercial and non-commercial signage (as here and in *State v. Miller*, 83 N.J. 402 (1980)), leafletting, picketers, live entertainment or adult theaters (as in *Schad, supra*, emanating from a New Jersey borough). From a practical standpoint, it cannot be presumed the locality or agency will forthwith strike the necessary constitutional balance where it legislates or acts. Thus, in such instances, the degree to which protected speech and the means it is communicated remains free from overbroad governmental encroachment, particularly through land use restriction or takings depends upon meaningful judicial review.

It is clear that, under decisions of the United States Supreme Court, the presumption of validity accorded governmental legislative decisions gives way where there is a degree of impingement on fundamental First Amendment rights. In such instance, the law is subjected to strict and independent scrutiny by the Courts. *Schad v. Mt. Ephraim*, 452 U.S. 61, 77 (1981); *Police Department of Chicago v. Mosley*, 408 U.S. 91, 99 (1972). In such instances, there may not be a mere deferral to the embodiment of the legislative decision nor to the findings of a trial court. See *Feiner v. New York*, 340 U.S. 315, 316 (1951).

Not only have the New Jersey courts been active in First Amendment case considerations, *State v. Miller, supra*, but a number of these decisions have been the subject of recent review by the United States Supreme Court. *Linmark Associates Inc. v. Willingboro*, 431 U.S. 85 (1976); *Schad v. Mt. Ephraim*, 452 U.S. 61 (1981); also see *Baldwin v. Redwood City*, 540 F.2d 1360, 1368; *Zilinsky v. Zoning Bd. of Adj. of Verona*, 105 N.J. 363, 371 (1987):

> In *State v. Miller, supra*, a municipal ordinance restricted use, size and placement of signs on residential properties. Given the first amendment implications, the Court applied strict scrutiny analysis and the burden shifted to the municipality to justify the means chosen to satisfy a compelling municipal interest. The Court required this municipality to "demonstrate more than a mere desire to preserve property values. It had to show that the particular restrictions on signs in fact related to the stated goal.

In *Metromedia v. San Diego,* 453 U.S. 490 (1981), the principal U.S. Supreme Court decision on zoning, billboards and application of the First Amendment, of which more below, the Supreme Court described outdoor advertising and its significance as a means of protected expression as follows:

> "Outdoor advertising is customarily purchased on the basis of a presentation or campaign requiring multiple exposure. Usually, a large number of signs in a variety of locations are utilized to communicate a particular advertiser's message. An advertiser will generally purchase a 'showing' which would involved the utilization of a specific number of signs advertising the same message in a variety of locations throughout a metropolitan area."
>
> Although the purchasers of advertising space . . . usually seek to convey a commercial message, . . . billboards have also been used to convey a broad range of noncommercial political and social messages [to publicize the City in motion campaign of the City of San Diego, to communicate messages from candidates for municipal, state and national offices, including candidates for judicial office, to propose marriage, to seek employment, to encourage the use of seat belts, to denounce the United Nations, to seek support for Prisoner of War and Missing in Action, to promote the United Crusade and a variety of other charitable and socially related endeavors and to provide directions to the traveling public." 453 U.S. at 502]

* * *

> Outdoor advertising increases the sales of products and produces numerous direct and indirect benefits to the public. Valuable commercial, political and social information is communicated to the public through the use of outdoor advertising. Many businesses and politicians and other persons rely upon outdoor advertising because other forms of advertising are insufficiently inappropriate and prohibitively expensive. 453 U.S. at 496, 497.
>
> * * *
>
> Billboards then like other media of communication, combine communicative and non-communicative aspects. As with other media, the government has legitimate interests in controlling the non-communicative aspects of the medium. *Kovacs v. Cooper* (336 U.S. 77) *supra*, but the First and Fourteenth Amendments foreclose a similar interest in controlling the communicative aspects. Because regulation of the noncommunicative aspects of a medium often impinges to some degree on the communicative aspects, it has been necessary for the courts to reconcile the government's regulatory interests with the individual's right to expression. 453 U.S. at 502.

Outdoor advertising is quite similar to radio, television, magazines, newspapers, and other means of communications of ideas in that the medium itself is truly the message. The very medium, in and of itself, is the means of communicating the expression of ideas to the public. The location of the billboard is necessary to permit the message *to be read.*

In *Schad v. Borough of Mount Ephraim,* 452 U.S. 61 (1981) the Court reversed the conviction of operators of an adult bookstore featuring live made dancing in a New Jersey municipality based upon a zoning ordinance which did not specifically permit the same. There were other establishments providing for live entertainment prior to the enactment of the ordinance which the New Jersey lower courts had held were permitted non-conforming uses.

The Supreme Court referred to certain ground rules applicable to all local legislation with effects on communication and expression. First, a party is entitled to rely on "the impact of the ordinance on the expressive activities of others as well as their own. Because overbroad laws, like vague ones, deter privileged activities." Secondly, the "First Amendment requires that there be sufficient justification for the exclusion of a broad category of protected expression as one of the permitted commercial uses" in a municipality. "While the power of governments to zone and control land use is undoubtedly broad," it must be exercised within constitutional limits" and "the standard of review is determined by the nature of the right assertedly threatened or violated rather than by the power being exercised or the specific limitation imposed." When "a law infringes upon a protected liberty, it must be narrowly drawn and must further a sufficiently substantial government interest" and as quoted from *Schneider v. State,* 308 U.S. 147, 161 (1939) (also appealed from New Jersey courts):

> Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and different task falls upon the courts to weigh the circumstances and to appraise the substantiality of the regulation of the free enjoyment of [First Amendment] rights. 452 U.S. at 69, 70.

In *Schad,* the Court specifically concluded that the reasons given by the municipality to justify its restriction of protected expression were inadequate, include claimed needs of its residents, need for police protection and certain traffic oriented claims such as parking. The Court stated that even in the context of claimed "time, place and manner restriction" theoretically supporting as restraint:

> The crucial questions is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time. Our cases make clear that in assessing the reasonableness of a regulation, we must weigh heavily that communication is involved; the regulation must be narrowly tailored to further the State's legitimate interest. 451 U.S. at 75.

Thus, in the form of communication here involved, outdoor advertising, is not the normal place of billboards on a public street? Are they not normally found next to or on commercial establishments? Is not their natural reader, the driving public? Is not their form and content unique to the message portrayed: Short, direct, combining a few words with a strong portrayal of a particular event (holiday, election etc.), a company's service or image, or a consumer product? Can a municipality determine the social utility of the message and bind those affected, including the public, by such conclusion, preventing judicial scrutiny? Can, state agencies make such decisions and cause a reduction of the right of expression within an area and be treated off-handedly, not as a fundamental right, and without a scintilla of proof as to its justification?

The *Schad* court also dealt with the contention that the form of expression there involved, made live entertainment was available elsewhere in the country, i.e. there were alternative means of receipt of the same communication. This would be similar to a contention that billboards might still be located on traveled highways, elsewhere, so they could be excluded from Rt. 72 however otherwise appropriate. The Court quoted from *Schneider:*

> "One is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." 452 U.S. at 76, 77.

Justice Blackman in concurring pointed out that, while Mount Ephraim might have assumed that as a land use regulation, once a minimal scrutiny of a rational relationship test had occurred, those opposing the regulation should have burden of proving First Amendment invalidity, after *Schad* "it should be clear that where protected First Amendment interests are at stake, regulations have no such 'talismanic immunity from constitutional challenge.' " 452 U.S. at 77.

In *Metromedia v. San Diego*, 453 U.S. 490 (1981) that California city had prohibited the direction of off-premise fixed outdoor advertising structures anywhere in the city, i.e. the typical billboard. On premise commercial signs were permitted. The stated purpose was to improve aesthetics and to eliminate hazards of distracting sign displays. The Supreme Court held the ordinance was violative of the First Amendment by a vote of 6-3. Parenthetically, it is for this reason that municipal attempts to bar outdoor advertising have sharply declined throughout the country. Defendants can hardly suggest that *Metromedia* somehow reduces constitutional protection: *the total bar of billboards was voided*! The Court noted that the hundreds of outdoor advertising displays in San Diego were *all* located in areas zoned for commercial and industrial purposes, that the structures were on land for the particular use, that the signs were available for "all comers" and the copy changed regularly.

In *Metromedia*, the Supreme Court reviewed the history of its review of commercial speech as subject to the protection of the First Amendment. Prior to 1975, purely commercial advertisements were not protected, as enunciated in *Valentine v. Chrestensen*, 316 U.S. 42 (1942). It was *Valentine* that *the N.J. Supreme Court cited* in the case brought by *United Advertising Corp.* (the predecessor to Gannett Outdoor) *v. Raritan*, 11 N.J. 144 (1952) to defeat United's claim that a bar to continuation of off-premises outdoor advertising signs

throughout Raritan was barred by the First Amendment while permitting continuation of all its structures as protected non-conforming uses (11 N.J. at 150), since declared to not only be a statutory protection under N.J.S. 40:55-48 (now 40:55D-68) but a U.S. and New Jersey Constitutional protection under due process as well. *Grundelhener v. Daugler,* 29 N.J. 256, 262-264 (1959); *Arkam Machine & Tool Co. v. Lyndhurst,* 73 N.J. Super. 528, 533 (App. Div. 1962); *Kirsch Holding Co. v. Manasquan,* 111 N.J. Super. 359, 368, 369 (Law Div. 1970) rev'd on other grounds, 59 N.J. 241; *Krul v. Bd. of Adj. of Bayonne,* 122 N.J. Super. 18, 23 (Law Div. 1972) affirmed 126 N.J. Super. 150 (App. Div. 1973). As noted elsewhere herein, it appears that Defendants condemnations involved in the present case would be invalid in any event to the extent, since it purports to prohibit not merely the new erection of billboards in the municipality, but their *maintenance,* a clear violation of the statute, the constitutions, and the principles expressed in the cases above.

Metromedia reviewed the cases after *Valentine* in the 1970's that clearly established that even *pure* commercial speed "enjoys a substantial degree of First Amendment protection" 453 U.S. at 505, although permitting a regulation in some instances where noncommercial speech could not be. 453 U.S. at 506.

It then discussed the four-part test that it had evolved when dealing with commercial speech expressed first in *Central Hudson Gas & Electric Corp. v. Public Service Commission,* 447 U.S. 557, 563-566 (1980) that:

> "(1) The First Amendment protects commercial speech only if that speech concerns lawful activity and is not misleading.
>
> A restriction on otherwise protected commercial speech is valid only if it
>
> (2) seeks to implement a substantial governmental interest,

(3) directly advances that interest, and

(4) reaches no further than necessary to accomplish the given objective.

The Court noted that it did not have before it a total prohibition of outdoor advertising and was not considering whether such a ban would be consistent with the First Amendment but cites *Schad, supra*, holding that a total prohibition of a "particular expressive forum" was so violative nor did it consider whether the federal Highway Beautification Act restricting the location of billboards to areas zoned industrial or commercial was constitutional. 453 U.S. 514 n. 20.

The Court specifically rejected San Diego's claim that the ordinance could be appropriately characterized as a reasonable "time, place and manner restriction." As previously held, one of the elements for such restraints was leaving "open ample alternative channels for communication of the information." Just as in the prior case of *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85 (1975) (appealed from the New Jersey courts), people rely on outdoor advertising or certain types of signs because other means are less effective media for communicating the message, 453 U.S. at 516.

In as clear a statement as can be had the Supreme Court stated:

> *There can be no question that a prohibition on the erection of billboards infringes freedom of speech.* The exceptions do not create the infringement, rather the general prohibition does. But the exceptions to the general prohibition are of great significance in assessing the strength of the city's interest in prohibiting billboards. We conclude that by allowing commercial establishments to use billboards to advertise the products and services they offer, the city necessarily has conceded that some communicative interests, e.g. onsite commercial advertising, are stronger than its competing interests in esthetics and traffic safety.

> It has nevertheless banned all non-commercial signs except those specifically excepted. (Emphasis supplied) 453 U.S. 520.

The Court concluded the ordinance reached too far into "the realm of protected speech" and was "unconstitutional on its face." Yet, the state claims their removal of billboards are not an impingement of a fundamental right and is clearly wrong.

Even in the most recent pronouncement by the United States Supreme Court, *Renton v. Playtime Theatres, Inc.*, _____ U.S. _____, 89 L.Ed.2d 29 (1986) upholding a zoning ordinance prohibiting adult movie theaters from locating within 1,000 feet of residential property, church, park or school against First Amendment challenge, the court required evidentiary proof of adverse effects, either in the municipality or in one similar to it. Further, the Court found there were alternate areas within Renton appropriate and accessible for the proposed use and thus "alternate avenues of communication." p. 41. That is obviously impossible where the state bars the type of use or structure completely in an area or highway.

From a practical standpoint, it is highly unlikely that a ban on outdoor advertising throughout an area zoned for business while permitting onsite commercial sign structures, where there are commercial and industrial areas, would be upheld. Just as in *United Advertising v. Raritan*, 11 N.J. 144 (1952) and in *Metromedia, supra*, such billboards are generally located in commercial and industrial zones where they are appropriate, not in residential unless expressly permitted at the time of erection. The construction of a structure can be prevented in an area where it would create a clear hazard or be out of keeping with the neighborhood.

Defendants acts to condemn all of Plaintiff's billboard properties in an area while leaving adjacent lands untouched are violative of the First Amendment.

In *National Advertising Co. v. The City of Rolling Medows,* 789 F.2d 571, (7th Cir. 1986) and *Dolson Outdoor Advertising Co. v. City of Macomb,* 46 Ill. App. 3d 116, 360, the Court held that Outdoor Advertising (Billboards) may not be banned in Zoned Commercial and Industrial Districts and are protected by the First Amendment of the U.S. Constitution. See *Metromedia, Inc. v. San Diego,* 453 U.S. 490, 513, 101 S.Ct. 2882, 69 L.Ed. 2d 800 (1981).

In *National Advertising Co. v. The City of Rolling Medows, (supra)* the Federal Court held that Billboards may not be prohibited in Zoned Business and Industrial areas and was within the Court's Federal Jurisdiction.

In *National Advertising Co. v. The City of Orange,* docket #cv 85-4968TJH(Kx) copy of opinions attached, the Federal Court held that prohibition of billboards in commercially zoned areas violates the First Amendment of the U.S. Constitution and the Ninth Circuit Court of Appeals heard an appeal of this matter on July 6th, 1987, under docket #87-5739. An opinion is forthcoming and will be supplied to this court, by this Plaintiff, upon receipt of same.

Plaintiff's complaint clearly sets forth that Defendants Acts and their improper implementation of the States laws and regulations, against Plaintiff are unconstitutional and Plaintiff's complaint clearly sets forth valid Federal claims against Defendants.

Inverse Condemnation

Plaintiff is entitled to a full "Trial on the Merits" on all counts, after Defendants entered onto Plaintiff's lands, on September 30th, 1983 and ousted Plaintiff-owner by removing and destroying his billboards. The controlling case on this subject in the Supreme Court of the United States, is *Kirby Forest Industries, Inc. v. United States,* 104 S.Ct. 2187 (1984). Also see *United States v. Dickinson,* 331 U.S. 745, 747-749, 67 S.Ct. 1382, 1384-1385, 91 L.Ed. 1789 (1947); *United States v. Dow,* 357

U.S. 17, 21-22, 78 S.Ct. 1039, 1044, 2 L.Ed.2d 1109 (1958); *United States v. Clarke*, 445 U.S. 253, 257, 100 S.Ct. 1127, 1130, 63 L.Ed.2d 373 (1980); *Hillcrest Golf & Country Club v. City of Altoona*, 400 N.W. 2d 493 (Wis. App. 1986); *Lugar v. Edmondson Oil Co. Inc.*, 102 S.Ct. 2744 (1982); *Loretto v. Teleprompter Manhatten CATV Corp.*, 102 S.Ct. 3164 (1982); *Schloss v. State Highway & Public Works Commission*, 230 N.C. 489, 53 S.E. 2d 517 (1949); *First Lutheran Church v. Los Angeles County, (supra); Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922); *Pumpelly v. Green Bay Co.*, 13 Wall. 166, 177-178 (1872); *Kimball Laundry Co. v. United States*, 338 U.S. 1 (1949); *United States v. Petty Motor Co.*, 327 U.S. 372 (1946); *United States v. General Motors Corp.*, 323 U.S. 373 (1945); *United States v. Causby*, 328 U.S. at 261.

Defendants are blatently violating Federal Highway Laws, Regulations and the United States Constitution.

The Defendants are fully aware that the Federal Laws, Regulations and the Constitution require that they shall not take Plaintiff's properties (billboards) without compensation.

Plaintiff's attorney, in "BELL II", on March 15th, 1983, again sought compensation for the billboards that were located on the properties which the State condemned but had paid no value for the actual structures located thereon (see Appendix 212a, letter dated March 16th, 1983, page 2 paragraph 6 in Complaint):

> "I asked Mr. Monteforte whether, in light of the discriminatory nature of the taking of your property and the fact that the compensation for the takings is still on deposit with the Superior Court, the State might consider retaining the funds and reconveying the parcels back to you. His answer was an unequivocal 'no'. Also, I asked whether the State might consider paying you an additional sum for the value of the billboards themselves. Again the response was negative."

In *Whitman v. State Highway Commission of Missouri*, 400 F.Supp. 1050 (1975) the Court held:

> "5. UNITED STATES. Sections of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 mandating that an agency acquiring real property also acquire an equal interest in any structure which will be required to be removed and making provisions of the Act obligatory upon states as a condition to receipt of federal financial assistance are judicially enforceable. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 302, 305, 42 U.S.C.A. 4652, 4655.
>
> 6. COURTS. Claims of owners of billboards against State Highway Commission for injunctive relief based upon alleged violation of sections of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, mandating that an agency acquiring real property also acquire an equal interest in any structure which will be required to be removed and making provisions of the Act obligatory upon states as a condition to receipt of federal financial assistance presented a federal question jurisdiction. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 302, 305, 42 U.S.C.A. 4652, 4655; 28 U.S.C.A. 1331(a).

Burlington Northern R. Co. v. Public Utility Com'n, 637 F.Supp. 584 (W.D. Tex. 1986); *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908); *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed. 2d 662 (1974); *Pennhurst State School Hospital v. Halderman*, 465 U.S. 89, 104 S.Ct. 900, 909, 79 L.Ed.2d 67 (1984); *Almota Farmers Elevator and Warehouse Co. v. United States*, 409 U.S. 470, 35 L.Ed.2d 1, 93 S.Ct. 791; *Wisconsin Department of Trans. v. Office of the Commissioner of Trans.*, 400 N.W.2d 15 (Wis. App. 1986).

See *Cooper Medical Center v. City of Camden,* 52 A.2d 413 (N.J. Super A.D. 1987); *Matter of Egg Harbor Associates,* 94 N.J. 358, 374, 464 A.2d 1115 (1983); *Washington Market Enterprises v. Trenton,* 68 N.J. 107, 116, 343 A.2d 408 (1975); *State v. Chapman,* 69 N.J.L. 464, 55 A. 94 (S.Ct. 1903), aff'd 70 N.J.L. 339, 57 A. 1133 (E.&A. 1903); *Norton Outdoor Advertising Inc. v. Village of Arlington Heights,* 69 Ohio St. 2d 539 (1982); *State of Colo. v. Western Paving Const. Co.,* 630 F.Supp. 206 (D.Colo. 1986); *Rutledge v. Boston Woven Hose & Rubber Co.,* 576 F.2d 248 (9th Cir. 1978); *Elliott v. University of Tenn.,* 766 A.2d 982 (1985).

"Vested Property Rights"

Count 14 of Plaintiff's complaint deals with Lot 31, Block 147, which Defendants intentionally withheld state approval of State Permits, for thirteen (13) years and alleged their ownership, until 1983, when Plaintiff's attorney proved, with voluminous affidavits and documentation, that Defendants did not, in fact, have any title to the property or even a color of it.

See *Boulevard Realty v. Providence,* 308 F.Supp. 244 (1969); *Bell v. Hood, supra; Gully v. First National Bank, supra; Foster v. Herley, supra.*

The defendants position (which they knew was not true) that they thought Plaintiff only had a lease on the property, would still entitle Plaintiff to a property right. See *Kleinman v. City of Lafayette,* 493 So.2d 890 (La. App. 3 Cir. 1986); *State Dept. of Transportation & Development v. Jacob,* 483 So.2d 592 (La. 1986); *Foster v. City of Detroit,* 405 F.2d 138 (1968).

"Taking for Other Than Public Purpose Violates the Fourteenth Amendment of the Federal Constitution"

Plaintiff is entitled to a "trial on the merits" to test the reasonableness of the defendants selection of his lands. *Iowa Express Dist. v. N.L.R.B.,* 739 F.2d 1305 (8th Cir. 1984).

Plaintiff has continually alleged that the defendants acts are a "taking for other than a public purpose", which is violate of the Fourteenth Amendment of the Federal Constitution.

> *Loan Association v. Topeka,* 20 Wall. 655; *Fallbrook Irr. Dist. v. Bradley,* 164 U.S. 112, 17 S.C. 56; *Clark v. Nash,* 198 U.S. 361, 25 S.C. 676; *Strickley v. Highland Boy Gold Min. Co.,* 200 U.S. 527, 26 S.C. 301; *Matter of Tuthill,* 163 N.Y. 133, 57 N.E. 303, 79 Am. St. Rep. 574, 49 L.R.A. 781.

Defendants taking of Plaintiff's properties for a use which is not public, *is challengeable* and such taking *may be enjoined.*

> *Kessley v. Indianapolis,* 199 Ind. 420, 157 N.E. 547, 53 A.L.R. 1; *Mid-America Pipeline Co. v. Iowa State Commerce Comm.,* 253 Iowa 1143, 114 N.W.2d 622; *Columbia Hills Corp. v. Mercantile-Safe Deposit & Trust Co.,* 231 Md. 379, 190 A.2d 635; *Chesarone v. Pinewood Builders, Inc.,* 345 Mass. 236, 186 N.E.2d 712.

As is true, also in this case, which is *unnecessary.*

> *Coe v. Aiken,* 61 F.24; *Piedmont Cotton Mills v. Georgia R., etc. Co.,* 131 Ga. 129, 62 S.E. 52; *Atlanta Terra Cotta Co. v. Georgia Rd., etc. Co.,* 132 Ga. 537, 64 S.E.563; *Walker v. Anderson,* 90 Neb. 119, 132 N.W. 937; *Pittsburg, etc., R. Co. v. Greenville,* 69 Ohio St. 487, 69 N.E. 976, *Emery v. Toledo,* 121 Ohio St. 257, 167 N.E. 889; *Langenau Mfg. Co. v. Cleveland,* 159 Ohio St. 525, 112 N.E.2d 658; *Chew v. Philadelphia,* 257 Pa. 589, 101 A.915, L.R.A. 1918 A.986; *Gring v. Sinking Spring Water Co.,* 270 Pa. 232, 113 A.435; *Foley v. Beach Creek Ext. R. Co.,* 283 Pa. 588, 129 A.845; *Biddle v. Wayne Water Works,* 7 Del.Co.373; *Groce v. Greenville, etc., R.Co.,* 94 S.C.199, 78 S.E.888; *Rutland R., etc., Co. v. Clarendon Power Co.,* 86 Vt. 45, 83 A.332, 44 L.R.A.NS 1204.

"Purpose of Taking" Presents Federal Question

Defendants and their agencies, have condemned Plaintiff's lands, in a discriminatory manner and their acts are not in good faith and are capricious and injurious and are beyond the privilege conferred by the statute and the Constitution of the United States.

The purpose of the taking presents a Federal Question.

> *State ex rel. Polson Logging Co. v. Superior Court,* 11 Wash.(2d) 545, 119 Pac.(2d) 694; *State v. Superior Court,* 128 Wash. 79, 222 Pac. 208; *Dickison v. Clark,* 363 Ill. 258, 2 N.E.(2d) 91; *Petition of Fayette County Commissioners,* 289 Pa. 200, 137 Atl. 237; *State Highway Commission v. Saline County,* 205 Ark. 860, 171 S.W.(2d) 60; *Johnson v. Consolidated Gas, Electric Light & Power Co. of Baltimore,* 187 Md. 454, 50 Atl.(2d) 918, 170 A.L.R. 709.

Plaintiff has sought continuously to challenge defendants acts and selection of his lands since 1969 and the N.J. Supreme Court authorized that right of challenge to plaintiff, in *Wes Outdoor Advertising Co. v. Goldberg,* 55 N.J. 347 (1970).

The Court upheld the constitutionality of the States right to condemn but in the last paragraph of their decision, stated that "any abuse by the Commissioner (in his selections) was subject to recourse through the courts."

"No Compensation"

Plaintiff's complaint clearly alleges that defendants have "Removed—Destroyed" plaintiff's billboards without compensation and have "Illegally and Improperly" and "without notice", entered upon Plaintiff's lands, where NO condemnation proceedings were even pending, for any reason and destroyed plaintiff's billboards, in February, 1986; September, 1983; November, 1975 and 1967.

See *Nat. Adv. Co. v. Utah State Road Com'm*, 486 P.2d 383; *State Highway Dept. v. Branch*, 152 S.E. 2d 327 (1966); *Whitman v. State Highway Comm. of Missouri*, 400 F.Supp. 1050 (1975); *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, 302, 305, *42 U.S.C.A.* 4652, 4655; *Jim Young Dev. Corp. v. State Highway Com'n of Mo.*, 56 F.R.D.38 (1971); *Cuyahoga River Power Co. v. City of Akron*, 240 U.S. 462, 36 S.Ct. 402, 60 L.Ed. 743; *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 28 S.Ct. 7, 52 L.Ed. 78; *Foster v. Herley* (C.A.6) 330 F.2d 87; *Foster v. City of Detroit* (C.A.6) 405 F.2d 138; *Haczela v. City of Bridgeport* (D.Conn.) 299 F.Supp. 709, 712; *Sayre v. United States* (N.D.Ohio) 282 F.Supp. 175; *First English Evan. Luth. Ch. v. Los Angeles Cty.*, cite as 107 S.Ct. 2378 (1987); *Chicago B & Q.R. Co. v. Chicago*, 166 U.S. 226 (1897); *United States v. Clarke*, 445 U.S. 253, 257 (1980), quoting 6 P. Nichols, Eminent Domain #25.41 (3d rev. ed. 1972); *Jacobs v. United States*, 290 U.S. 13 (1933); *United States v. Causby*, 328 U.S. at 261, 66 S.Ct. at 1065-1066; *Cooper Medical Center v. City of Camden*, 520 A.2d 413 (N.J. Super. A.D. 1987); *State v. Chapman*, 69 N.J.L. 464, 55 A.94 (S.Ct. 1903), aff'd 70 N.J.L. 339, 57 A.1133 (E. & A. 1903).

"Plaintiff's Action not Barred by *Res-Judicata* or on the Merits"

In all Plaintiff's challenges, in State Courts and Federal Courts, at no time did Plaintiff get a "*trial on the merits*" or a "*hearing on the merits*".

See *Morgan v. City of Rawins*, 792 F.2d 975 (10th Cir. 1986); *Gully v. First Natl. Bank in Meridian*, 299 U.S. 109, 57 S.Ct. 96, 81 L.Ed. 70 (1936); *Madsen v. Prudential Federal Savings & Loan Association*, 635 F2d 797, 800-01 (10th Cir. 1980), cert. denied, 451 U.S. 1018, 101 S.Ct. 3007, 69 L.Ed.2d 389 (1981); *Clegg v. United States*, 112 F.2d 886 (10th Cir. 1940); *Garcia v. Wilson*, 731 F.2d 640, 650 (10th Cir. 1984), aff'd _____ U.S. _____, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985); *Muskegon Theatres, Inc. v. City of Muskegon*, 507 F.2d 199 (1974).

"State Officials Have no Immunity in this Case"

Plaintiff's complaint alleges that Defendants and their employees were grossly negligent to a point of recklessness or deliberate indifference, and committed their acts wrongfully, corruptly, intentionally and under color of law, in a continued general pattern of conduct, against Plaintiff, for the purpose of putting Plaintiff out of business.

See *Brunken v. Lance,* 799 F.2d 337 (7th Cir. 1986); *Quern,* 440 U.S. at 332, 99 S.Ct. at 1143; *Graham,* 105 S.Ct. at 3107 n.18; *Williams v. City of Boston,* 784 F.2d 430 (1st Cir. 1986); *Parratt v. Taylor,* 451 U.S. 527, 535, 101 S.Ct. 1908, 1913, 68 L.Ed.2d 420 (1981); *Schloss v. State Highway,* 230 N.C. 489, 53 S.E. 2d 517 (1949); *Pue v. Hood,* 222 N.C. 310, 22 S.E.2d 896; *State v. Curtis,* 230 N.C. 169, 52 S.E.2d 364; 49 A.J. 310, 28 A.J. pp. 355, 450, 453; Anno. 43 A.L.R. 408; *Vinson v. O'Berry,* 209 N.C. 287, 183 S.E. 423; *Sayre v. U.S.,* 282 F.Supp. 175 (1967); *McMurry v. Surety Fed. Sav. & Loan Assn. N.C.,* 348 S.E. 2d 162 (N.C. App. 1986); *Butz v. Economou,* 438 U.S. page 478; *Brown v. Trench,* 787 F.2d 167 (3rd Cir. 1986).

"State has no Immunity in this Case"

The State of New Jersey and the New Jersey Department of Transportation have no immunity in this case.

See *Gilbert Cent. Corp. v. Kemp,* 637 F.Supp. 843 (D.Kan.1986) at page 847(1.); *Lugar v. Edmonson,* 102 S.Ct. 2744 (1982); *Burlington N.R. Co. v. Public Utility Comm. of Texas,* 637 F.Supp. 584 (W.D.Tex.1986); *Sayre v. U.S.,* 282 F.Supp. 175 (1967).

U.S. Congress amended sec. 109(c) of PUBLIC LAW 93-643, January 4th, 1975 (88 Stat 2284) and sec. 122(a) of PUBLIC LAW 95-599, on November 6th, 1978 (92 Stat 2701) requiring ALL states to pay . . .

(g) Just compensation shall be paid upon the removal of any outdoor advertising sign, display or device lawfully erected under State Law and not permitted under subsection (c) of this section, whether or not removed pursuant to or because of this section. The Federal share of such compensation shall be 75 per centum. Such compensation shall be paid for the following:

(A) The taking from the owner of such sign, display or device of all right, title, leasehold, and interest in such sign, display or device; and

(B) The taking from the owner of the real property on which the sign, display or device is located, of the right to erect and maintain such signs, displays and devices thereon.

(h) All public lands or reservations of the United States which are adjacent to any portion of the Interstate System and the primary system shall be controlled in accordance with the provisions of this section and the national standards promulgated by the Secretary.

This Federal Law is a waiver of State Immunity defenses and is a valid override by Congress U.S.C.A. Constitutional Amendment 11. See *Brunken v. Lance,* 799 F.2d 337 (7th Cir. 1986); *Lugar v. Edmonson,* 102 S.Ct. 2744 (1982).

"Conspiracy"

Plaintiff alleges, with overwhelming evidence, that defendants have continuously conducted a conspiracy to destroy plaintiff and his business since 1968.

Their continuing harassment and violation of Plaintiff's civil rights, re-start the statute of limitations.

Plaintiff's continued updated attempts to have his case "heard on the merits" since 1968 to the present, placed state officials and defendants "on notice" that continuing harassment was going on. See *Lewis v. Fed. Prison Industries,* 786 F.2d 1537 (11th Cir. 1986).

See *Harrison v. Springdale*, 780 F.2d 1422 (8th Cir. 1986); *U.S. v. A-A-A Elec. Co., Inc.*, 788 F.2d 242 (4th Cir. 1986); *Grunewald v. United States*, 353 U.S. 391, 397, 77 S.Ct. 963, 970, 1 L.Ed. 2d 931 (1957); *Earlier, in United States v. Kissel*, 218 U.S. 601, 608, 31 S.Ct. 124, 126, 54 L.Ed. 1168 (1910); *Kissel*, 218 U.S. at 608, 610, 31 S.Ct. at 126; *Hyde v. United States*, 225 U.S. 347, 369, 32 S.Ct. 793, 803, 56 L.Ed. 1114 (1912); *United States v. James*, 494 F.2d 1007, 1026 (D.C. Cir.), cert. denied, 419 U.S. 1020, 95 S.Ct. 495, 42 L.Ed.2d 294 (1974); *Atkins v. United States*, 307 F.2d 937, 940 (9th Cir. 1962); *McDonald v. United States*, 89 F.2d 128, 133-34 (8th Cir.), cert. denied, 301 U.S. 697, 57 S.Ct. 925, 81 L.Ed. 1352 (1937); see also *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 252-54, 60 S.Ct. 811, 857-58, 84 L.Ed. 1129 (1940); *United States v. Inryco, Inc.*, 642 F.2d 290 (9th Cir. 1981), pet. for cert. dismissed, 454 U.S. 1167, 102 S.Ct. 1045, 71 L.Ed.2d 324 (1982); *United States v. Girard*, 744 F.2d 1170, 1172 (5th Cir. 1984); *United States v. Epperson*, 552 F.Supp. 359, 361 (S.D. Ill. 1982). See also, *United States v. CFW Construction Co.*, 583 F.Supp. 197, 206 (D.S.C.), aff'd without opinion, 749 F.2d 33 (4th Cir. 1984); *U.S. v. Capo*, 791 F.2d 1054 (2nd Cir. 1986); *Pope v. Bono*, 641 F.Supp. 489 (D.D.C. 1986) at page 496; *Page v. United States*, 729 F.2d 818, 822 (D.C. Cir. 1984); *Lawrence v. Acree*, 665 F.2d at 1328; *Griffin v. Breckenridge*, 403 U.S. 88, 97, 91 S.Ct. 1790, 1795, 29 L.Ed.2d 338 (1971); *Airweld Inc. v. Airco, Inc.*, 742 F.2d 1184 (1984) at page 1190; *Zenith Radio Corp.*, 401 U.S. at 338, 91 S.Ct. at 806; *Kaiser Aluminum Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1051 (5th Cir. 1982), cert. denied, 459 U.S. 1105, 103 S.Ct. 729, 74 L.Ed.2d 953 (1983); *MacDonald, Sommer & Frates v. Yolo County*, 106 S.Ct. 2561 (1986); *Sylvester v. Callon*, 781 F.2d 520 (5th Cir. 1986).

"Trespass"

Plaintiff's complaint alleges that defendants entered onto Plaintiff's lands and destroyed billboards and billboard structures, without right of access, in 1968, 1983 and 1986; said acts as alleged, were grossly negligent to a point of recklessness or deliberate indifference, and were committed wrongfully, corruptly, intentionally and under color of law in a continued general pattern of conduct, against Plaintiff, for the purpose of putting Plaintiff out of business.

See *Ingram v. Summerlin*, 348 S.E.2d 68 (Ga. App. 1986); *Morey v. Essex County*, 94 N.J. Law 427.

"Denied Right of Challenge"

Plaintiff was denied a right of challenge, in two of the condemnation trials, on Lot 26A Block 145 and Lot 26A Block 145A.

The trial judge ruled that the jury could only consider land value of the takings and that any challenge would have to be brought in a separate independent action for Billboard Values.

See *Provident Mut. Life Ins. Co. v. State Highway Comm.*, 155 Kan. 351, 125 P.2d 346; *State v. Boicourt Hunting Ass'n*, 282 P.2d 395; *Bumm v. Colvin*, 181 Kan. 630, at pages 636 and 637, 312 P.2d 827, and authorities cited therein; *Franks v. State Highway Commission*, 182 Kan. 131, 137, 319 P.2d 535; and *Cline v. Kansas Gas & Electric Co.*, 318 P.2d 1000; *Harrison v. Springdale*, 780 F.2d 1422 (8th Cir. 1986); *Greenholtz*, 436 F.Supp. at 436; *Sanders*, 724 F.2d at 666; *Garland*, 594 F.2d at 1223; *Hall v. Sutton*, 755 F.2d 786, 787 (11th Cir. 1985); *Matzker v. Herr*, 748 F.2d 1142, 1150-51 (7th Cir. 1984); *Lamar v. Steele*, 693 F.2d 559, 562 (5th Cir. 1982), cert. denied, 464 U.S. 821, 104 S.Ct. 86, 78 L.Ed. 2d 95 (1983); *Milhouse v. Carlson*, 652 F.2d 371, 374 (3rd Cir. 1981); *Silver v. Cormier*, 529 F.2d 161, 163 (10th Cir. 1976); *United States ex rel. Cleggett v. Pate*, 229 F.Supp. 818, 821-22 (N.D. Ill. 1964).

"Compensatory and Punitive Damages"

Plaintiff is entitled to compensatory damages against defendants. In *C.I.R. v. Hayes,* 631 F.Supp. 785 (N.D. Cal. 1985), the court addressed the damage issue, at page 785.

Plaintiff's complaint seeks lost future profits for FRAUD and violation of his Civil Rights.

See *Hughes v. Sinclair Marketing, Inc.,* 389 N.W. 2d 194 (Minn. 1986); *Hollerman v. F.H. Peavey & Co.,* 269 Minn. 221, 130 N.W. 2d 534 (1964); *Lewis v. Citizens Agency of Madelia, Inc.,* 306 Minn. 194, 235 N.W. 2d 831 (1975); *Hendrickson v. Grengs,* 237 Minn. 196, 54 N.W. 2d 105 (1952); *Esteel Co. v. Goodman,* 348 S.E. 2d 153 (N.C. App. 1986); *Medcom, Inc. v. C. Arthur Weaver Co., Inc.,* 348 S.E. 2d 243 (Va. 1986).

"Attorney's Fees"

Plaintiff is entitled to attorney's fees, from the *First Overt Act,* in 1967 to the present day and extending into the future until such time as the matters in this complaint are finally resolved with a 'trial on the merits' and through any appeal thereafter.

See *Gavette v. Office of Personnel Management,* 788 F.2d 753 (Fed. Cir. 1986); *Ackerley Communications v. City of Salem, Or.,* 752 F2d 1394 (1985); *Teitelbaum v. Sorenson,* 648 F.2d 1248, 1251 (9th Cir. 1981); *Herring v. U.S.,* 781 F.2d 119 (8th Cir. 1986); *Riverside v. Rivera,* 106 S.Ct. 2686 (1986); *Council Enterprises, Inc. v. Atlantic City,* 491 A.2d 789 (N.J. Super. L. 1984).

Court "is barred" from Dismissing Plaintiff's Complaint

The Court is BARRED from dismissing any part of Plaintiff's complaint on "Summary Motions" because of Plaintiff's property rights, which are clearly addressed. See *Jim Young Develop. Corp. v. State Highway Com'n of Mo.,* 56 F.R.D. 38 (1971); *Conley v. Givson,* 355 U.S.

41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80; *Great Atlantic & Pacific Tea Co. v. Amalgamated Meat Cutters & Butcher Workmen of North America* (C.A.8) 410 F.2d 650; *Leimer v. State Mut. Life Assur. Co.* (C.A.8) 108 F.2d 302; *Cheatham v. Carter County* (C.A.6) 363 F.2d 582, 4 A.L.R. Fed. 226; *Truhe v. Rupell*, 641 F.Supp 57 (M.D.Pa. 1985); *Mack v. South Bay Beer Dist. Inc.*, 798 F.2d 1279 (9th Cir. 1986); *Lockary v. Kayfetz*, 587 F.Supp 631 (1984); *Gray v. Chrysler Corp.*, 715 S.W. 2d 282 (Mo. App. 1986).

"Disputed Issues Reserved for Trial"

Plaintiff's complaint raises many factual disputed issues that can only be determined after a full trial on the merits.

See *Barrett v. United States*, 689 F.2d 324 (1982); *Poage v. City of Rapid City*, 431 F.Supp 240 (1977).

"Prior Discrimination is Relevant and Injunctive Relief is Mandatory"

Defendants, by their own admissions, and failure to deny acts, as far back as 1968 and as recent as February, 1986, are relevant in the present case, before this court.

See *Allen v. County of Montgomery, Ala.*, 788 F2d 1485 (11th Cir. 1986); *Cox v. American Cast Iron Pipe Co.*, 784 F.2d 1546 (11th Cir. 1986); *NAACP v. City of Evergreen, Ala.*, 693 F.2d 1367, 1370 (11th Cir. 1982); *Jenkins v. United Gas Corp.*, 400 F.2d 28, 32-33 (5th Cir. 1968).

It is clear after reviewing Plaintiff's complaint and appendix, that Plaintiff is entitled to *"immediate injunctive relief"* and such relief *is mandatory.*

"Fraud and Concealment"

Defendant Nickolas Monteforte used Fraud Upon the Court, in Plaintiff's Exhibit #10, #12, and #13 and detailed in Count 14 of Plaintiff's complaint. Defendants

have refused to testify (see Appendix 227a) and even obtained previous court orders, preventing Plaintiff from taking depositions or interrogatories of State employees and officers, in order to conceal the Department's records and motives, in an effort to deny Plaintiff a proper "trial on the merits". Richard J. Harcar is repeating fraudulent positions of Monteforte, in his brief.

At page 43 of Harcar's brief, referring to Parcel L2R-31D, also known as Lot 31, Block 147, he states:

> "despite the fact he always advertised on the parcel even when he lacked a permit which he has now obtained."

This statement is false and was addressed by Plaintiff previously. Defendants are fully aware of its falsity.

See *Continental Airlines v. Group Systems, Intern*, 109 F.R.D. 594 (C.D.Cal. 1986), at page 596; *Adduono v. World Hockey Ass'n*, 109 F.R.D. 375 (D. Minn. 1986).

Defendant Nickolas F. Monteforte's false certification was material to the underlying litigation and had a direct bearing on the District and Circuit Court's finding. Count 14 of Plaintiff's Complaint seeks to recover for lost revenue, as defined in Exhibit 14, for the periods during which Defendants 'forced' Plaintiff to keep the billboard vacant and unfinished.

Defendants orders were in writing and are of record (see Appendix 196a, 201a, 221a and 236a).

See *Boatwright v. Walker*, Ky.App. 715 S.W. 2d 237; *Minotti v. Wheaton*, 630 F.Supp. 280 (D. Conn. 1986); *U.S. v. Anderson*, 798 F.2d 919 (7th Cir. 1986); *Henderson v. Lopez*, 790 F.2d 44 (7th Cir. 1986); *Barratt v. United State*, 798 F.2d 565 (2nd Cir. 1986) at pages 573 and 574.

Conclusion

The Federal District Court for New Jersey and the U.S. Court of Appeals for the Third Circuit have continually issued opinions that are anti-billboard and offend the United States Constitution and the Constitution of the State of New Jersey.

An example of the Third Circuit's feelings was expressed from the bench, on December 11th, 1978, in BELL II, when Justice Gibbons said 'why should we send this matter back for a lengthy trial when the courts calendar is full of more important matters'.

Another example of this attitude, can be found in *R.C. Maxwell Co. v. Borough of New Hope,* 735 F.2d 85 (3rd Cir., 1984). Maxwell, an outdoor advertising company, brought an action against the "historic town" of New Hope because of the removal of two of Maxwell's billboards. The signs in question were located on undeveloped property owned by Citibank, which allowed Maxwell to maintain the signs on a year-to-year tenancy. A borough official wrote a letter to Citibank requesting Citibank to terminate Maxwell's lease. The letter stated the borough wanted the billboards removed for aesthetic reasons and suggested that a billboard ordinance was pending and eventually legal proceedings would follow if the signs were not removed. In the interest of good community relations and with the intent to develop the property at some time in the future, Citibank acquiesced, declining to renew the lease at the end of its term.

Maxwell sued the borough in federal court, alleging violations of its rights to free speech and due process and seeking punitive and compensatory damages. The theory was that the letter had somehow "coerced" Citibank into denying the lease renewal. Summary judgment was awarded the borough and the Third Circuit affirmed. On the basis of its analysis of the facts, the court observed:

> . . . New Hope's letters to Citibank, devoid as they were of any enforceable threats, amounted to nothing more than a collective expression of the local community's distaste for the billboards. Businesses are naturally sensitive to their images in the community. If we were to apply constitutional standards to every private action intended to conform to civic sentiment, we would erode the ambit of private action greatly. We conclude that Citibank's desire to create a receptive climate for any future development plans does not rise to the level of state-coerced action.

In the present matter before this court, Plaintiff has clearly set forth an adequate showing that the United States Court of Appeals for the Third Circuit and the United States District Court for New Jersey abused its discretion, committed numerous errors of law and misjudged the evidence.

See *Cordis Corp. v. Medtronic Inc.*, 835 F 2d 859 (Fed. Cir. 1987); *Rogers v. Hill*, 289 U.S. 582, 587, 53 S.Ct. 731, 733-34, 77 L.Ed. 1385 (1933); *Medtronic, Inc. v. Gibbons*, 684 F2d 565, 567 (8th Cir. 1982).

The U.S. Court of Appeals and the New Jersey Federal District Court should be reversed to secure and maintain uniformity of the application of the Constitutional protections granted by the United States Constitution and the Constitution of the State of New Jersey.

The questions presented by this appeal are substantial. Probably jurisdiction should be noted and the case set down for argument.

Respectfully submitted,

WESLEY K. BELL, *Pro Se* and
individually trading as
Wes Outdoor Advertising Co.